Regulatory responses must be balanced and operate in a way that does not impede growth and productivity

2010 SCORECARD OF RED TAPE REFORM

Business Council of Australia

2010 Scorecard of Red Tape Reform

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Background

> *'The benchmarking of the performance of regulation across jurisdictions has assisted in identifying opportunities and challenges of regulatory reform in Australia … The advocacy of the Business Council of Australia which has produced a 'Scorecard of State Red Tape Reform' benchmarking the performance of the States has also been an impetus for reform of regulatory management mechanisms.'*
>
> – OECD Reviews of Regulatory Reform, *Australia: Towards a Seamless National Economy*, OECD, 2010, p. 142.

Governments are increasingly under pressure to regulate against all risks, despite the costs and burdens that may be imposed on business and the community by doing so. However, regulatory responses must be balanced and operate in a way that does not impede growth and productivity. Business regulation therefore continues to be a key focus for the Business Council of Australia (BCA).

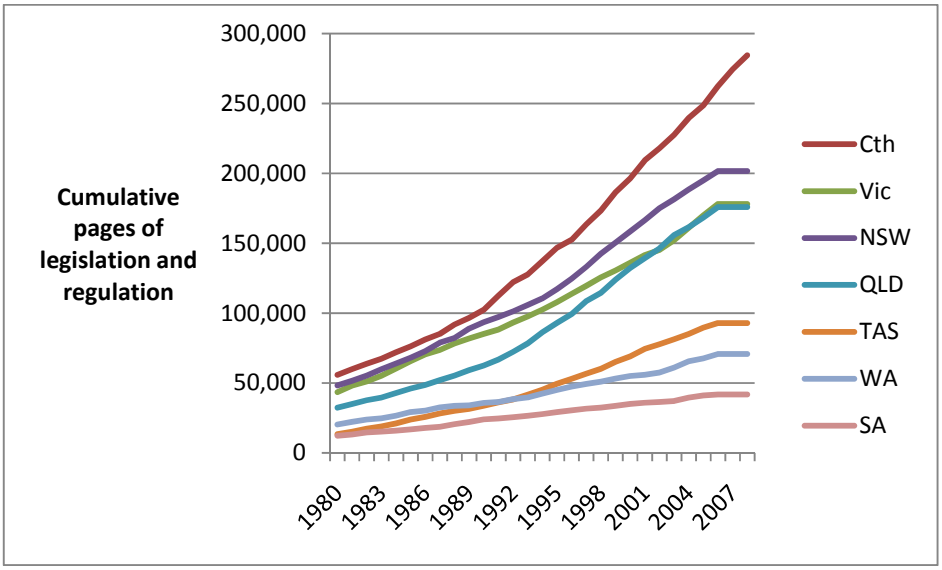
The BCA considers that a regular assessment of jurisdictional performance of regulation-making is an important mechanism for holding regulatory authorities to account. This report demonstrates that while regulation-making processes may have improved in general across the jurisdictions since 2007, many of those improvements have been from a low base. The reforms that the BCA called for in 2007 in the areas of accountability and transparency have not been achieved and there has been a disappointing trend of downward performance at the Commonwealth level. The Commonwealth and Victoria have long been leaders of regulatory reform initiatives in Australia and have therefore acted as an example to other jurisdictions. The BCA is therefore disappointed at the declining state of regulatory process delivered at a Commonwealth level. We consider that much more can be done at all levels of government to ensure that regulation-making processes are robust and deliver good regulatory outcomes. All jurisdictions therefore need to improve their performance, particularly to ensure that regulation is subject to appropriate 'checks and balances', consultation and transparency.

In May 2007, the BCA published *A Scorecard of State Red Tape Reform*. This publication responded to concerns that showed that the level of red tape in Australia was growing three times as fast as the rate of economic growth and that much of Australia's business regulation was being produced in an uncoordinated way across the country. Research has shown that between 1980 and 2006 more than five times the number of pages of legislation were passed than there had been in the eight decades before.[1]

In the period since the 2007 Scorecard, there has been a continuation of regulatory overreach in Australia. Figures from the Rule of Law Association in May 2010 showed more than 50,000 pages of law

[1] C. Berg and C. Murn, *Over-ruled: How Excessive Regulation and Legislation Is Holding Back Western Australia*, Project Western Australia Discussion Paper, Institute of Public Affairs and Mankal Economic Education Foundation, June 2009, p. 30.

and regulation were passed by federal and state parliaments last year.[2] This has resulted in significant imposts on both business and the community and a potential drag on Australia's overall economic competitiveness.



Source: IPA statistics.

The BCA has long been concerned about the growth of red tape, particularly where regulation-making processes are not in place to ensure that the regulation is efficient and effective. The BCA has highlighted this concern, and recommendations for improvement, in various publications such as:

- *Business Regulation Action Plan for Future Prosperity*, May 2005 (2005 Action Plan)
- *Regulatory Reform: A Scorecard to Measure Australia's Progress*, June 2006 (2006 Scorecard)
- *A Scorecard of State Red Tape Reform*, May 2007 (2007 Scorecard).

In the 2007 Scorecard, the BCA called for major reforms in the way governments generate, implement and review red tape in order to address regulatory blow-out at the source. The 2007 Scorecard found that no state received an 'excellent' rating for its red tape-making processes and that a number of states received at least one 'poor' rating. The inconsistencies in approaches for regulation-making across the country were also considered problematic. The BCA assessed the Commonwealth jurisdiction separately in its 2005 Action Plan and 2006 Scorecard. We found that in general the Commonwealth had a good regulation-making system but that there were areas that could be improved.

In this 2010 report, all jurisdictions are assessed together, to determine whether they have a set of comprehensive frameworks for regulation-making (including prospective and retrospective solutions) and whether there has been any positive reform progress, including evidence of a reduced regulatory

[2] 'Government Strangles Red Tape Promise', *The Australian Financial Review*, 18 May 2010, p. 3.

burden, over the period since publication of the previous scorecards. This scorecard assesses the reform of regulation-making processes and the processes for review, against four main benchmarks.

In most jurisdictions, red tape-cutting programs or targets have been implemented and these initiatives are welcomed. However, processes that merely respond 'after the fact' to reduce red tape do not stem the tide of future bad regulation. There needs to be a comprehensive model that incorporates both prospective and retrospective reforms to prevent bad regulation from being made in the first place.

It is difficult to measure the overall regulatory burden on business. If the creation of new regulation is not controlled there is a greater risk that important aspects of regulation-making processes may be overlooked, such as 'evidence-based' decisions, cost–benefit analysis and appropriate consultation with affected stakeholders. Ultimately, it is the outcomes and quality of regulation that are important.

Red tape is important because it affects Australia's economic performance and therefore community wellbeing. If regulations continue to be announced without due process then very damaging consequences for business and the economy can ensue. BCA members and other prominent business figures have, for example, expressed their concern about the damaging consequences of the mining tax proposal – such as the sovereign risk effects (see Exhibit 1). A consultative approach with cost–benefit analysis and buy-in from stakeholders can avoid the damaging consequences of regulatory proposals and ensure regulations do not impose unnecessary costs and burdens on the economy.

Exhibit 1. The mining tax proposal – regulation made in isolation can have damaging economic consequences

- *'Certainly the feedback that I've had from markets offshore is that they regard Australian sovereign risk as having increased as a result of the proposal, even though that proposal may be watered down or altered or even not proceeded with.'* – Malcolm Broomhead, Chairman Asciano and Director BHP Billiton
- *'Sovereign risk is on one hand reality, and on the other hand perception … And perception can be a reality. And there is a perception floating around that sovereign risk in Australia has increased.'* – Wal King, Chief Executive Leighton Holdings Limited
- *'The feedback I've got, and I've been to Canada recently, is that it was regarded as a sudden shift in direction and a change in direction by Australia, which did in fact spook, I think, miners and financiers overseas.'* – Tony Shepherd, Chairman Transfield Services
- *'Australia has done some damage, that damage could be lasting to its reputation as a safe haven for investors.'* – Evy Hambro, Joint Chief Investments Officer, Global Mining Investments Limited

Sources: 'Business Chiefs Urge Tax Reform', *The Australian*, 16 August 2010, pp. 1 and 4; 'Resource Tax Undermining Australia', *The Australian Financial Review*, 18 August 2010, p. 1.

The Banks Taskforce in 2006 identified that much more needs to be done to fix regulation-making processes across the country, stating that it 'seems that policy-makers and regulators have often responded to new social or economic issues with knee-jerk regulatory solutions'.[3] However, the Taskforce also stated that their recommendations for regulatory reform would 'require major changes in

[3] Regulation Taskforce, *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business,* Report to the Prime Minister and the Treasurer, Canberra, January 2006, p. 148.

the way governments operate, and these will not occur without political commitment and support'.[4] Given the pressure for governments to provide regulatory responses and solutions to most issues raised in the community, it takes a government that is truly committed to reform to implement robust checks and balances upon regulation-making. As Gary Banks has stated:

> In responding to such pressures, governments themselves are often attracted to regulatory solutions as a tangible demonstration of government concern. Regulatory solutions are also more convenient politically, because the costs are typically 'offbudget', diffuse and hard to measure. Moreover, each regulatory solution tends to be devised within individual government agencies. Within such policy 'silos', the cumulative impact of regulation across government is poorly understood and rarely taken into account.[5]

What is clear from this 2010 report is that while regulation-making processes have improved somewhat across the jurisdictions, reforms that the BCA called for in 2007 in the areas of 'accountability' and 'transparency' have not been achieved. These reforms are important for ensuring that quality regulations are produced. The lack of reform in these areas has had demonstrated effects on the quality and quantity of regulations that have been produced in all jurisdictions. The BCA urges all jurisdictions to improve their performance in these two key benchmark areas.

The BCA supports the Productivity Commission review, agreed through COAG, to assess the efficiency and quality of both COAG and jurisdictional regulation impact assessment (RIA) processes in 2012. However, it is our understanding that this is not intended to be a regular review or aimed at assessing outcomes or compliance with regulation-making processes.

Recommendation: The BCA considers that the Productivity Commission should be tasked with regularly undertaking an assessment of regulation-making systems and compliance by all jurisdictions with their regulation-making processes. In conjunction with this, a permanent advisory council, made up of representatives from across business and other affected groups, could be established, which would inform the assessment and be able to provide information about the regulatory outcomes in the jurisdictions.

Purpose of the red tape scorecard

The BCA continues to highlight that it is the way that regulations are made that leads to good policy outcomes. Good process also reduces the prospect of unintended consequences and unnecessary regulatory burdens being imposed on all levels of the community. Therefore, this 2010 Scorecard has the following main purposes:

- ***Business perspective*** – the scorecard provides the basis for business, large and small, to understand how the jurisdiction or jurisdictions in which they operate are progressing with red tape reform. The scorecard also highlights for governments and regulators, those aspects of regulatory reform that are particularly important to business.

[4] ibid., p. 146.

[5] G. Banks, Chairman Regulation Taskforce and Productivity Commission, 'Reducing the Regulatory Burden: The Way Forward', Inaugural Public Lecture, Monash Centre for Regulatory Studies, Melbourne, 17 May 2006.

- ***Comparison*** – in the absence of a current reference point for states to compare themselves (both against the regulatory performance and reforms of others), the scorecard provides an assessment of how business views the relative performance of regulation-making across jurisdictions.

- ***Guidelines*** – the scorecard provides guidance in terms of benchmarks that business considers are important for gauging the effectiveness in regulation-making processes. These benchmarks may prove useful to independent arbiters of reform such as the Productivity Commission and COAG Reform Council in assessing and developing policy in respect of regulatory reform.

2010 Scorecard of Red Tape Reform

The Key: explanation of the benchmarks

Rating	Description
Excellent 9–10*	All aspects of a sound system of regulation-making are present, operational and there is no significant improvement required in those processes. There have been no deviations from the established process. A significant demonstrated reduction in the regulatory burden on business is evident.
Good 7–8*	A sound, systemic regulation-making process that includes (but with some possible scope for improvement in some areas): • a comprehensive framework of principles for good regulation-making • accountability mechanisms including independent review and public reporting on regulation-making processes • mandatory regulation impact statement (RIS) systems for proposals that will have a significant impact on business and processes to ensure that consultation is conducted with all business in a timely and effective way • processes of regular review of regulations (e.g. sunset clauses and annual red tape reviews) to ensure that regulations remain efficient and effective over time, with a demonstrated red tape reduction shown.
Adequate/Good 5–6*	An adequate system that incorporates many of the requirements of good process has been established. However, the system has not been set up in a way that is likely to achieve the desired outcomes needed from the process – such as compliance by policy makers. For example, while guiding principles, oversight mechanisms, consultation guidance and review processes might be present, some of those processes have not been established in a way that would ensure compliance.
Adequate – but room for improvement 3–4*	An adequate, systemic regulation-making process that incorporates some, but not all, of the requirements of good process and therefore requires review and improvement in the system. For example, there may be good guiding principles, but limited accountability or transparency mechanisms to ensure that they are implemented.
Poor 0–2*	A poor regulation-making process that requires much to be done, in particular: • the establishment of comprehensive principles and RIS requirements supported by mandatory RIS processes and oversight mechanisms • timely, active and effective stakeholder consultation that includes the opportunity for all relevant businesses to participate in the consultation • the establishment of review processes, for example through formal reviews and sunset clauses.

*__Numerical ratings:__ Recognising that there is a variation in performance across jurisdictions within a given ratings band, we have allocated numerical indicators to provide a more fulsome representation of performance by jurisdictions. For example, a number of jurisdictions that have received an adequate/good rating. However, within that rating, some jurisdictions may have developed a more comprehensive regulation-making system. For this reason a higher numerical rating has been given to those jurisdictions to recognise their reform efforts.

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Where jurisdictions have received the same numerical rating, however, this should not be taken to indicate that they have the same regulation-making system or the same areas for improvement. All of the regulation-making systems differ across the country and each jurisdiction will need to consider its reform objectives on its own merits.

Overall findings

Consistent with the approach taken in the 2007 Scorecard, jurisdictions' regulation-making systems were assessed against four key benchmarks: principles, accountability, transparency and process of review. This 2010 report has found that more needs to be done to improve the regulation-making processes within most jurisdictions, particularly in respect of accountability and transparency benchmarks. The BCA has identified the trend performance of all jurisdictions since 2007.

Jurisdiction	Overall assessment (2010)	Overall assessment (2007)	Overall trend performance since 2007	Systems in place creating a strong path to excellence	Indicative score within the ratings band
Victoria	Good	Good	=	✗	7
Commonwealth	Adequate/Good	Good	▼	✗	6
New South Wales	Adequate/Good	Poor	▲	✗	6
Queensland	Adequate/Good	Adequate – but with clear room for improvement	▲	✗	5
Western Australia	Adequate/Good	Poor	▲	✗	5
South Australia	Adequate/Good	Adequate/Good	=	✗	5
Northern Territory	Adequate/Good	Adequate – but with clear room for improvement	▲	✗	5
Tasmania	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=	✗	4
Australian Capital Territory	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=	✗	3

Note: More information about the process for assessment can be found in the Attachment to this document.

The BCA has also assessed whether the regulation-making systems in each jurisdiction are being developed in such a way that the reforms are likely to lead to 'excellent' ratings of the regulation-making processes in the future. What is apparent from this assessment is that the BCA has been able to identify significant reforms that are needed in all jurisdictions to improve their regulatory process. Accordingly, no jurisdiction can yet be considered to be on a path towards excellence.

In general, many of the jurisdictions have made improvements to their regulation-making systems since 2007 – with jurisdictions such as Western Australia, Queensland and New South Wales having made broad and systemic changes to their regulation programs. Even so, the scorecard has found that more needs to be done to improve the regulation-making processes within all jurisdictions, particularly in respect of accountability and transparency benchmarks.

All of the jurisdictions have regulation-making principles that provide a general framework for good regulation-making. Notably, Northern Territory, Queensland and South Australia have improved their performance in the 'principles' benchmark since the last scorecard.

Having received the lowest assessment in the 2007 scorecard, Western Australia's improvement on every benchmark is encouraging. Improvements in early 2009 in Western Australia have for example included the establishment of a two-stage Regulation Impact Statement (RIS) process and the establishment of the Regulatory Gatekeeping Unit as an oversight mechanism for RISs. However, the subsequent years following the Western Australian reforms will determine how effective the regulation-making processes are in practice. In June 2009, Western Australia was reported by the Institute of Public Affairs (IPA) as being 'over-ruled' and having the fastest growing regulation than any other state.[6] The IPA recommended an external oversight agency be established in Western Australia to ensure the effectiveness of the reforms.[7]

Similarly, Queensland has recently implemented reforms of its regulation-making processes. However, Queensland also has been reported as imposing high regulatory burdens on the community and business.[8] The BCA considers that Queensland's reforms to its regulation-making system would also benefit from establishing an independent oversight agency to monitor and report on regulations.

Some jurisdictions such as ACT, Tasmania and South Australia have not improved in any significant way since the last scorecard, but there is some work in progress such as South Australia's current review of its guidelines for regulation making. Victoria has made slight improvements in its regulation-making system, and is currently undertaking a review of its regulatory system. Victoria was already a relatively good performer and therefore while the improvements may not have changed the score, recognition of the sound system for regulation-making (in particular in the checks and balances imposed on regulation-making) as well as the continual improvement process remain very important.

The Commonwealth has long established regulation-making processes. However, on a comprehensive assessment based on the four benchmarks, there remains clear room for improvement. For example,

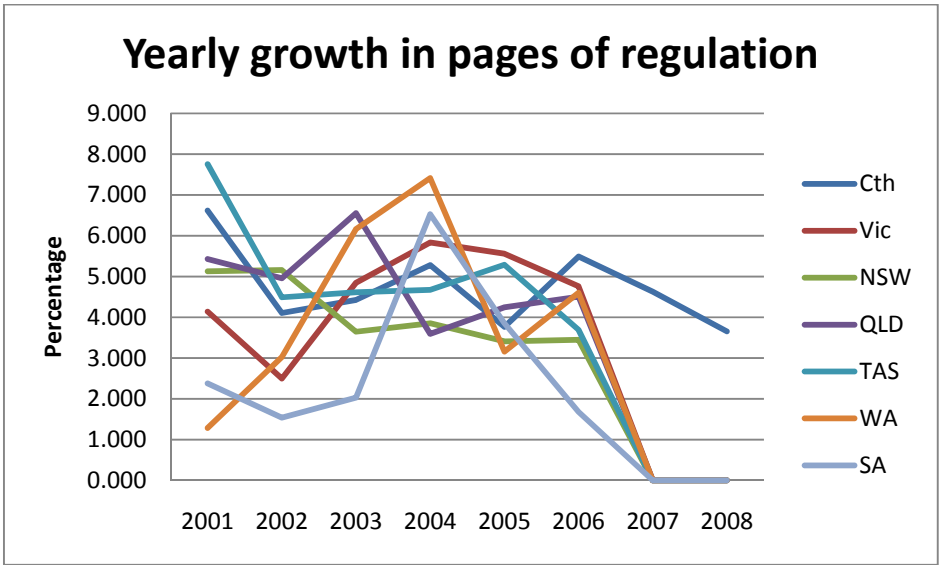
[6] C. Berg and C. Murn, *Over-ruled: How Excessive Regulation and Legislation Is Holding Back Western Australia*, Project Western Australia Discussion Paper, Institute of Public Affairs and Mankal Economic Education Foundation, June 2009, p. 1.

[7] ibid, p. 30.

[8] 'Red Tape Burden Hits QLD business', *The Australian Financial Review*, 15 September 2009, p. 11.

improving the independence arrangements of the Office of Best Practice Regulation (OBPR) is recommended – the BCA considers that the OBPR should be moved back into the Productivity Commission to achieve the independence that it was afforded in the past. Additionally, concerning developments have resulted from the recent review of the best practice regulation handbook, which in our view may have potentially compromised the effectiveness of the RIS process. Formal mechanisms for red tape reduction and review should also be considered. The Commonwealth increasingly administers some of the most important regulations that affect business and the Australian economy as a whole, with consumer laws being an example of new laws that have been centralised recently. Important laws around taxation, corporations and competition are increasingly important to business and the place of Australia's economy in the global economy. As such, the processes for regulation-making as well as review are critical to facilitating a competitive business and economic environment at a Commonwealth level.

The BCA considers the most important aspect of a good regulation-making system is whether it is comprehensive. Red tape reduction programs have reduced the growth in regulation, with yearly growth rates dropping to zero for many of the jurisdictions with red tape reductions programs in place.



Source: IPA statistics.

We acknowledge that the growth in pages of regulation is not a measure of quality. However, we consider that a comprehensive regulation-making model is needed that incorporates prospective reforms to prevent bad regulation from being made in the first place and retrospective reforms to reduce regulatory burdens. Particularly important for prospective regulation-making are the areas of 'accountability' and 'transparency'.

> ***Accountability*** – We continue to be disappointed that most jurisdictions have not established a truly independent agency to assess the adequacy of regulatory compliance and to conduct broader economic reviews to identify regulation reform priorities.

Transparency – No jurisdiction received a score of Good in the 'transparency' benchmark. Across all jurisdictions, consultation mechanisms continue to be deficient in terms of when and how consultations take place, the length of time of consultation, proactive consultation mechanisms and who is consulted. It is important that stakeholders are adequately consulted in the development of new regulatory proposals and early in the policy development process – so that unnecessary burdens and unintended consequences can be avoided. If stakeholders are excluded from the policy development process, it is more likely that policies will be developed that do not reflect the true and practical impact of the laws on the community.

An integrated and comprehensive regulation-making system is essential if good regulations are to be made. There is little point developing a good system if checks and balances are not present to force agencies to comply. In this respect, the BCA emphasises the need for better accountability and transparency mechanisms across all the jurisdictions to ensure that regulation-making processes are followed and will increase the likelihood that good regulation will be produced.

2010 Scorecard of Red Tape Reform

How the scorecard was developed

To assess progress with red tape reform in each jurisdiction, the BCA wrote to the Commonwealth Government and the premiers and chief ministers of each state and territory in December 2009, asking for information about their regulation-making processes against four key BCA benchmarks. These benchmarks are based on the elements of a good regulatory process that the BCA believes are important and which were used to make the same assessment in the 2007 Scorecard.

All of the jurisdictions should be commended for their constructive participation and in responding to information requests. Responses were received from all jurisdictions between January and May 2010. Also since the release of the 2007 Scorecard, the BCA has had an opportunity to discuss regulation-making processes with most of the jurisdictions, and has been encouraged by the positive way in which the 2007 Scorecard was received.

The responses highlighted in Exhibit 2 below from each of the jurisdictions, demonstrate the positive commitment that all jurisdictions have towards reform.

Exhibit 2. Written responses from jurisdictions – a snapshot

- Letter from Minister for Finance and Deregulation, Mr Lindsay Tanner MP, Commonwealth Government, received 28 January 2010

— *'Reflecting the importance of the regulatory reform agenda, in October 2008 I requested the Organisation for Economic Co-operation and Development (OECD) to undertake a review of regulatory reform settings in Australia … The OECD review is planned for release in February 2010 and I encourage the BCA to draw on the review when conducting research for the Scorecard of Red Tape Reform.'*

- Letter from Chief Minister Paul, Henderson, Northern Territory Government, dated 16 February 2010

— *'As the Territory Government is committed to providing an efficient and competitive regulatory environment for business, robust and transparent regulation-making processes are considered integral to this objective.'*

- Letter from Premier Colin Barnett, Western Australian Government, received 25 February 2010

— *'The first BCA Scorecard of Red Tape Reform highlighted the need for ongoing regulatory reform in Western Australia, and I look forward with interest to reading the Second Scorecard of Regulatory Reform.'*

— *'Since the release of your Scorecard of Red Tape Reform in 2007, Western Australia has commenced a significant program of regulatory reform.'*

- Letter from Secretary of the Department of Premier and Cabinet, Mr Rhys Edwards, Tasmanian Government, dated 26 February 2010 (in caretaker mode)

— *'Since 2007, Tasmania has been an active participant in the Council of Australian Government Reform agenda to reduce the burden of red tape on business and the community and continues to progress a range of reforms in this area.'*

- Letter from Premier John Brumby, Victorian Government, received 2 March 2010

— *'I am pleased that the Business Council of Australia is conducting a second scorecard of regulatory reform and will be analysing all Australian governments. There has been much effort across the Victorian Government to*

ensure that the regulation-making framework in Victoria continues to incorporate better regulation principles, including a clear case for regulation to be imposed, public consultation and robust cost–benefit analysis.'

— *'…we are currently looking at ways to further strengthen our established processes for making efficient and effective regulation…'*

- Letter from Treasurer Andrew Fraser, Queensland Government, received 9 March 2010 (following letter received 5 March 2010)

— *'Since the Business Council of Australia's 2007 Scorecard of State Red Tape Reform, the Queensland Government has strengthened its commitment to regulatory reform by taking action on two main fronts to put in place a regulatory environment that delivers better economic, social and environmental outcomes.'*

— *'The findings of the first scorecard and feedback from BCA members were valuable in informing the development of the RAS system.'*

- Letter from Treasurer Katy Gallager, ACT Government, dated 10 March 2010

— *'The ACT Government is committed to improving the regulatory environment for business and I appreciate the BCA's strong interest in regulatory reform.'*

- Letter from Minister for Regulatory Reform, John Hatzistergos, New South Wales Government, received 15 March 2010

— *'Since its previous response to the Business Council of Australia's (BCA's) State Red Tape Reform Scorecard in 2007, the NSW Government has made substantial progress in its regulatory reform agenda.'*

- Letter from Deputy Chief Executive Lachlan Bruce, Department of Trade and Economic Development, South Australian Government, dated 17 May 2010

— *'In previous correspondence to you, the Premier also expressed his determination that South Australia will become the most competitive jurisdiction in Australasia in terms of red tape affecting business.'*

— *'In the response to your first Scorecard … we reported South Australia's commitment to reducing red tape by at least 25% by 2008.'*

Note: subsequent references to these letters will be by reference to the jurisdiction only (e.g. 'Victoria letter').

In preparing its assessments the BCA has, in addition to the jurisdictions' written responses, also drawn on information from other publicly available sources such as the 2010 report by OECD on regulatory reform, *Australia: Towards a Seamless National Economy*.

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Red tape reform progress by jurisdictions: assessment against the four benchmarks

In constructing this scorecard, the BCA has established four key benchmarks as a basis for a good regulation-making process[9] and measured the jurisdictions' red tape reform processes against those benchmarks. They are:

- ***principles of regulation making*** – a comprehensive framework for regulation-making that includes: the need to consider alternatives to regulation, articulation of clear policy objectives, cost–benefit analysis, consultation with business, effective and proportional responses, and review
- ***accountability*** – mechanisms to ensure that the principles are implemented properly and that regulators are held to account for their performance
- ***transparency*** – mechanisms to ensure that decisions are made and policies developed in a transparent manner and that those potentially affected have an input into the process
- ***review*** – mechanisms so that regulations are subject to review to ensure they remain relevant and efficient over time.

The BCA's assessment of the overall performance of each of the states' regulation-making systems, reflecting assessment against the four key benchmarks, is outlined below.

All jurisdictions have approached these general principles in a different way. However, any approach must ensure that the regulation-making processes are transparent, that there is adequate consultation with those likely to be affected before decisions to regulate are made, and that officials developing regulation are accountable for their decisions and the quality of the regulations developed.

1. Principles of good regulation-making

Underpinning an effective regulatory framework is a sound set of guiding principles for regulation-making. There have been several efforts at articulating the important guiding principles, and in the 2007 Scorecard we noted the Banks Taskforce and the principles agreed at the April 2007 COAG as examples of key-principles for regulation making.

At the COAG meeting in April 2007, it was agreed that all governments would ensure that regulatory processes in their jurisdictions would be 'consistent' with the eight guiding COAG principles.

Several jurisdictions have improved their performance in this category – by implementing new principles and guidelines. For example:

[9] See for example pages 37 to 54 of the BCA *Business Regulation Action Plan.*

- In 2008, the Northern Territory put in place a new regulation-making framework (RMF) to replace its existing competition impact analysis. The Northern Territory states that the RMF 'establishes regulatory best practice processes consistent with' COAG's national reform agenda.[10]

- The Western Australian Regulatory Impact Assessment process commenced operation in December 2009, and includes a two-stage RIS process with a full RIS including 'a full analysis of the viable alternatives to address the identified problem … and aims to ensure that the costs of regulatory instruments are properly considered and broad consultation is undertaken to ensure accountability and transparency'.[11]

- Recently the Queensland Government has implemented the Regulatory Assessment Statement (RAS) system, also 'built around the COAG endorsed regulatory best practice principles'.[12]

We note that improvements are currently being considered in Victoria and South Australia. The South Australian Government stated that 'an assessment of the current arrangements has been undertaken to identify areas for improvement. These include new guidelines, which will be incorporated into a "Better Regulation Handbook"…'[13] Additionally, the Victorian Government is 'currently reviewing the contents of the Victorian Guide to Regulation to ensure that it continues to reflect best practice in regulation-making and provides updated content on alternatives to regulation and risk-based regulatory options'.[14]

It is encouraging that all of the jurisdictions have now implemented processes – through guidelines or other mechanisms – that recognise the underlying principles of good regulation-making. However, despite this improved performance, there continues to be a significant variation in processes, principles and guidelines across the jurisdictions. In the 2007 Scorecard we commented that, by virtue of the jurisdictions adopting regulatory processes that are 'consistent' with the COAG principles, this means that each jurisdiction has adopted differing principles and processes. We noted that:

> In the BCA's view, now that the principles have been agreed at COAG, there is no logical reason why all of the jurisdictions cannot adopt the principles so there is greater consistency across jurisdictions and business has a clear understanding of the framework each state will use when making regulation.

[10] Northern Territory letter.
[11] Western Australia letter.
[12] Queensland letter.
[13] South Australia letter.
[14] Victoria letter.

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Consistent with the comments by the Independent Pricing and Regulatory Tribunal (IPART) in reviewing the New South Wales regulatory system, the BCA considers that alignment of principles and guidelines over time is desirable. IPART recommended:[15]

> National RIS guidelines would allow better comparison of the quality of RISs and forecast costs and benefits of regulatory proposals across jurisdictions. This would subject regulatory proposals and the quality of RISs to greater scrutiny and provide greater clarity to stakeholders. National RIS guidelines would also ensure that each jurisdiction is taking the same approach to common areas of concern – in particular, consideration of mutual recognition or harmonisation opportunities.

Benchmark 1. Sound regulation-making principles

Jurisdiction	Assessment (2010)	Assessment (2007)	Change
Commonwealth	Good	Not assessed	N/A
New South Wales	Good	Not assessed	N/A
Victoria	Good	Good	=
Queensland	Good	Adequate – but with clear room for improvement	▲
Western Australia	Good	Adequate – but with clear room for improvement	▲
South Australia	Good	Good	=
Tasmania	Adequate/Good	Adequate/Good	=
Australian Capital Territory	Good	Good	=
Northern Territory	Good	Adequate/Good	▲

[15] Independent Pricing and Regulatory Tribunal (IPART), *Investigation into the Burden of Regulation in NSW and Improving Regulatory Efficiency*, Final Report, October 2006, p. 86.

2. Accountability

While it is important for good principles of regulation-making to be established, without accountability mechanisms to ensure that those principles are followed and sanctions imposed for non-compliance, bad regulations will continue to be introduced.

While we have seen a significant improvement in performance in the benchmark relating to principles of good regulation, we consider that accountability mechanisms are very important to ensure regulatory processes are followed. It is important to reiterate the Productivity Commission's statement on the issue of accountability, because it highlights the importance of accountability mechanisms to ensure that jurisdictions follow their own regulatory processes and achieve good regulatory outcomes.

> Most Australian jurisdictions have had a set of good regulatory practice principles for a number of decades. However, it is only within the last decade that any – such as completion of a Regulatory Impact Statement (RIS) – have been mandated. Further, for many Australian jurisdictions the penalty for failing to adhere to mandatory requirements has been minimal. The result has been that these requirements have sometimes been overlooked or completed after the decision making is already finalised.[16]

To establish frameworks that encourage agencies to comply with regulation-making procedures, the BCA considers that three main accountability elements should be included in a regulatory framework:

- an independent oversight body
- a Cabinet-level gatekeeper
- a champion of better regulation.

Of primary importance for enforcement of compliance and imposition of credible sanctions for non-compliance, is the establishment of a truly independent oversight body.

An independent oversight body can take roles such as review of RISs and independent and public reporting on compliance with regulation-making processes. The BCA also sees the independent body being able to conduct broader economic analysis and review, provide advice on possible competitive and regulatory issues arising in the future and regulatory reform priorities.

Independence ensures that analysis is conducted without influence by politicians or the host department, that regulatory principles are followed and that there are public consequences/sanctions if they are not followed. There are a number of ways that independence of an oversight agency can be achieved. A clear and proven mechanism is to establish a separate statutory body such as the Productivity Commission.

[16] Productivity Commission, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne, 2007, p. 117.

Alternatively, the agency could be a prescribed agency within the government department, with specific and formal agreements for establishing a separate secretariat and reporting and accountability mechanisms (much like the Victorian Competition and Efficiency Commission (VCEC)). There are a range of mechanisms (see Exhibit 3 below) across Australian jurisdictions, and those jurisdictions that have established the most formal independence mechanisms have been rated well in this 2010 Scorecard.

The BCA's preference for a sound and robust independence framework has been well documented. For example, we stated in respect of the Office of Regulation Review (now the OBPR) in the 2005 Action Plan that there is a greater risk of policy and political influence where an agency is located within a host department:[17]

> The ORR is a unit within the Productivity Commission, which itself enjoys a degree of independence from the policy and regulatory arms of Government. Consideration could be given to whether this is the most suitable location for the ORR. The logical alternative would be for ORR to be more closely connected to the cabinet office, to ensure regulatory proposals going before Cabinet satisfy the requirements of the RIS system. A number of States have adopted this model. Experience with this model, however, is that there is a much higher risk of the regulation oversight body becoming captured by the policy (and political) process.

In the 2007 Scorecard, the BCA noted its support for a truly independent agency such as the OBPR.

> The Commonwealth Government has taken a lead on this issue. The BCA strongly supports a process of accountability that includes an independent agency like the Office of Best Practice Regulation, which provides oversight of the RIS process and reports on the adequacy of RISs each year in its annual publication *Regulation and its Review*. Transparency and Accountability mechanisms are essential for ensuring that regulation-making processes are properly implemented and adhered to.

The BCA is concerned, however, that now the OBPR has been located in the Department of Finance, its independence may have been reduced. As a simple measure, the name and contact details of the CEO of the OBPR are not publicly available on the OBPR website – thus inhibiting the public from being able to bring issues to the attention of people at the highest level of the OBPR. The June 2010 version of the *Best Practice Regulation Handbook* has also lost the 'badging' of the OBPR. While these are only simple indicators, we consider they represent a broader issue about the independence of the OBPR and reinforce the anecdotal feedback that BCA members have provided about the accessibility of the OBPR since its move to the Finance Department.

Our views are supported by the statements of the Department of Finance and Deregulation itself in the Incoming Government Brief to Minister for Finance and Deregulation Senator Penny Wong, which states:[18]

> The credibility of regulation impact assessment to audiences such as the business community and international observers, such as the OECD, depends on the perceived level of independence of the body undertaking the assessment. Additionally, as the OBPR is responsible for assessing

[17] Business Council of Australia, *Business Regulation Action Plan for Future Prosperity*, 2005, pp. A1–9.

[18] Australian Government, Department of Finance and Deregulation, Incoming Government Brief to the Minister for Finance and Deregulation Senator Penny Wong, p. 4.3.

> the compliance of COAG RISs, there is a need to visibly demonstrate to states and territories that assessment will not reflect Commonwealth political or policy preferences.
>
> While the OBPR was located within the Productivity Commission this was not an issue, given the PC's statutory independence.
>
> OBPR is now a work unit within Finance and because it has no statutory independence there is a need to provide public assurance that neither the Finance Minister nor Finance's Executive will influence either the assessment of RISs or decisions concerning agency compliance with the RIS requirements.

At present, there does not appear to be any publicly available written documentation such as a protocol or agreement that details the independence arrangements for the OBPR. The Department of Finance and Deregulation recommends that the minister should:

> Consider indicating publicly that neither [the minister] nor Finance's Executive will direct the OBPR in relation to the judgements it makes on the adequacy of RISs and agency compliance with the Best Practice Regulation requirements. A statement to Parliament could provide such an assurance.[19]

The BCA does not consider that a statement by the minister alone will improve the independence or the effectiveness of the OBPR. The Ministers for Finance and Deregulation have made statements in Parliament in 2008 and 2010 to reassure the community that decisions on RISs will be made independently by the OBPR. However, little more has been done to reinforce the independence arrangements.

We would expect further information about the independence arrangements to be made publicly available. The appropriate information would include, for example, staffing arrangements and structures, reporting requirements, performance review arrangements and budgeting arrangements. Additionally, the OBPR would maintain its own website and 'badging'.

The ability for the office to be able to act as a 'check and balance' on regulatory proposals is a very important one. In the benchmark associated with 'transparency', we identify many regulatory proposals that have had inadequate consultation timeframes and consultation approaches – many have also resulted in poor regulatory outcomes. These policies may have been avoided if a truly independent arbiter had been involved during the process. The lack of truly independent structural arrangements leading to poor regulatory performance, coupled with the watering down of the RIS requirements, which reduces the ability for the OBPR to assess RISs as non-complaint,[20] leads us to the conclusion that a ministerial statement in Parliament is not sufficient to reinvigorate the independence and powers of the OBPR.

Structural design issues are of significant importance in ensuring independence and in satisfying the community that appropriate procedures are being followed. The BCA recommends the independence

[19] Australian Government, Department of Finance and Deregulation, Incoming Government Brief to the Minister for Finance and Deregulation Senator Penny Wong, p. 4.3.

[20] See discussion in relation to the assessment of the Commonwealth's performance under the transparency benchmark section below.

mechanisms attached to the OBPR be reinvigorated – and in particular – the BCA recommends that the move of the OBPR back into the Productivity Commission is the most likely approach that will gain the level of independence and effectiveness that the OBPR once achieved.

In New South Wales the creation of the Better Regulation Office (BRO) is an important and positive structural initiative that has been in operation since the 2007 Scorecard. For example, the annual report of the BRO highlights the regulatory reform progress that has been driven through the BRO. The BCA considers, however, that more rigorous processes could be implemented to ensure the BRO's independence, including more formal independence arrangements that would be made publicly available. Additionally, annual reporting by the minister on red tape reduction initiatives should be separated from the reporting by the BRO on regulation-making performance. In our view, the BRO should be making an independent assessment of agencies' regulation-making performance. Separate reporting by the minister on red tape reduction from reporting by the BRO on regulation-making, would enable the BRO to impose 'sanctions' more readily by reporting both negative and positive regulation-making performance of agencies.

Exhibit 3. Examples of oversight agencies

- The Office of Best Practice Regulation (OBPR) of the Commonwealth Government has a long history. Established in the early 90s as the Office of Regulation Review in the Productivity Commission, it is now located in the Department of Finance and Deregulation. The principle role of the OBPR is to act as the regulatory gatekeeper, by assessing the adequacy of RISs and providing certification. Proposals cannot proceed to the decision-making stage (Cabinet) until OBPR certification or an assessment of adequacy has been received. The OBPR also maintains a central online public register of all RISs. Minister Wong made a statement to Parliament in October 2010: 'Consistent with international best practice, the OBPR needs to exercise its decision-making functions independently. The government will ensure that Ministers do not influence the OBPR's decisions.'
- Victoria established the Victorian Competition and Consumer Commission (VCEC) in 2004, which is an independent oversight body. The role of the VCEC is also to provide independent economic analysis and advice on regulation and other issues affecting Victoria's economic development. The VCEC also collates information annually, for example on the laws and pages of regulation being produced each year. The VCEC also assesses RISs and reports annually on red tape-making performance. The Commission is administratively supported by the Department of Treasury and Finance, under a framework agreement between the Treasurer, Secretary of the Department and the Chair of the Commission.
- In 2007, the New South Wales Government established the permanent independent Better Regulation Office (BRO), which is housed in the Department of Premier and Cabinet and reports to the minister. Among other things, the BRO works with agencies, provides advice on the adequacy of Better Regulation Statements and reports yearly on compliance with better regulation requirements

and progress towards the government's red tape reduction target. The provision of assessments and advice by the BRO is 'ring-fenced' from the broader processes of its host agency.

- The South Australian Competitiveness Council, established in 2006 as a subcommittee of the Economic Development Board, develops and champions practical initiatives for South Australia's competitiveness and leads the red tape reduction program.
- The Queensland Office for Regulatory Efficiency (QORE), within Treasury, oversees the Regulatory Assessment Statement (RAS) system, including through regulatory impact assessment, whole-of-government regulatory reviews and advice and training to agencies on the RAS system.
- The Regulatory Gatekeeping Unit (RGU), established within the Western Australian Department of Treasury and Finance, monitors and reports compliance with the preparation of Regulatory Impact Analysis across government agencies.

In some instances, internal oversight initiatives such as those in South Australia, Queensland and Western Australia are good steps towards creating an institutional framework that performs some of the ideal elements of oversight (e.g. reviewing RIS compliance or making an economic assessment of the regulatory burden). However, they do not fulfil all of the functions of an ideal independent oversight body.

The ACT Government has advised that there is 'No independent body, however the ACT Treasury plays an advisory role as outlined in our RIS guide'.[21] In Tasmania, which is a small jurisdiction, the government advises that there are 'limited resources' and therefore the jurisdiction 'cannot justify a fully independent advisory body'.[22]

The BCA recommends that more states consider creating independent agencies, or improving the independence of their existing agencies, to increase accountability mechanisms. Western Australia's Regulatory Gatekeeping Unit (RGU) for example is located in Treasury. The Institute of Public Affairs commented in June 2009 with respect to the RGU:

> While many other jurisdictions have similar organisations, they are most successful when matched with an external oversight agency, like the VCEC … If the state wants a best practice regulatory oversight process, it will need a dedicated agency, specialising in oversight and investigation into the efficacy of existing regulation.[23]

Cabinet-level 'gatekeepers' for overseeing the regulation process, and agencies to champion better regulation-making, also contribute to the accountability system by ensuring that proper process is

[21] ACT letter.
[22] Tasmania letter.
[23] C. Berg and C. Murn, *Over-ruled: How Excessive Regulation and Legislation Is Holding Back Western Australia*, Project Western Australia Discussion Paper, Institute of Public Affairs and Mankal Economic Education Foundation, June 2009, p. 30.

followed and regulations will only reach Cabinet if the process has been followed. There are various structures across the states for this (see Exhibit 4 below for some examples).

Exhibit 4. Examples of Cabinet-level 'gatekeepers' and champions of better regulation

- In South Australia the Department of Trade and Economic Development's (DTED) assessment of business impact statements and use of the business cost calculator (BCC) are included with all policy proposals put forward for government decision-making. It is the role of the Cabinet Office to review and assess the adequacy of regulatory impact statements, and to consult with DTED where a business impact assessment has been completed or the BCC has been used.
- In Tasmania all legislative proposals are assessed by the Economic Reform Unit (ERU) within the Department of Treasury and Finance prior to submission to Cabinet.
- In Queensland the Treasurer (as Minister responsible for regulatory reform and efficiency) champions better regulation and oversights regulatory reform. Cabinet is the effective 'gatekeeper' for compliance with regulatory best practice principles as a Regulatory Principles Checklist must be attached to all regulatory proposals for approval under the newly established Regulatory Assessment Statement (RAS) system.
- In Western Australia the Cabinet Secretariat has the ability to reject submissions proposing regulation that is assessed as non-compliant with RIA.
- In New South Wales the role of the Minister for Regulatory Reform is to provide strategic policy advice on whether regulatory proposals, which are either submitted to Cabinet or the Executive Council, demonstrate compliance with better regulation principles. The minister also approves all Better Regulation Statements (BRS), which are submitted with all significant regulatory proposals and which must outline how the better regulation principles have been applied.
- The Commonwealth has created a Minister for Deregulation and the Cabinet Secretariat has a gatekeeping role to check whether the requirements for RIA/RIS have been met.[24]

Source: Letters to the BCA from the jurisdictions.

The BCA commends efforts by all jurisdictions towards improvements in the institutional frameworks for regulatory reform. The BCA recommends, however, that in striving to achieve excellence, more could be done to ensure independence of oversight agencies as well as institutionalising stakeholder engagement.

[24] OECD, OECD Reviews of Regulatory Reform, *Australia: Towards a Seamless National Economy*, OECD, Paris, 2010, p. 145.

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Benchmark 2. Accountability

Jurisdiction	Assessment (2010)	Assessment (2007)	Change
Commonwealth	Adequate/Good	Not assessed	N/A
New South Wales	Adequate/Good	Not assessed	N/A
Victoria	Good	Good	=
Queensland	Adequate/Good	Adequate – but with clear room for improvement	▲
Western Australia	Adequate/Good	Poor	▲
South Australia	Adequate/Good	Adequate/Good	=
Tasmania	Adequate/Good	Adequate/Good	=
Australian Capital Territory	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=
Northern Territory	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=

3. Transparency

Decision-making about regulatory proposals must be conducted in a manner that is transparent, and that enables those potentially impacted by existing or new regulation and other relevant stakeholders to provide input and assistance in the process. The Banks Taskforce, for example, stated that: 'a "regulate first, ask questions later" culture appears to have developed. Even where regulatory action is clearly justified, options and design principles that could lessen compliance costs or side-effects appear to be given little consideration'[25]

This benchmark is predicated on whether:

a. all regulation that may affect business is subject to a regulation impact statement (RIS) process that analyses alternative options

b. it is compulsory for the RIS process to include a proper cost–benefit analysis

c. there is a process to ensure there is adequate consultation on the draft RIS and Exposure Draft of significant regulation (including set minimum periods for consultation of at least 30 days)

d. publication of the final RIS is required before the regulation is passed.

This benchmark assesses the jurisdictions against all of the criteria above. The transparency processes across jurisdictions were found to be inconsistent. Adequate performers in this category did not perform well in some aspects of a transparent process. For example, a jurisdiction may have had a good RIS process in place that applied to all types of regulation, but may have had inadequate consultation mechanisms. Therefore, this benchmark assessed all of the elements of transparency to gauge how jurisdictions are performing. Most jurisdictions are assessed as needing to improve in the area of transparency.

A general discussion on RIS processes and consultation mechanisms is outlined below.

Regulatory Impact Statement processes

All regulation that significantly affects business must be subject to a RIS that analyses alternative options and includes a thorough and transparent cost–benefit analysis.

Recent reforms in this area have been positive. Western Australia and the Northern Territory have for example implemented a two-tiered assessment process for assessing regulatory proposals. In Western Australia a Preliminary Impact Assessment is conducted for all legislative proposals as an initial assessment of the likely impacts of the proposal. If the impacts are considered significant on business, consumers or the economy, a RIS is required. Importantly, the RIS process consists of two stages: a consultation RIS and a decision RIS. Agencies may make the responses to the consultation RIS available

[25] Regulation Taskforce, *Rethinking Regulation: Report of the Taskforce on Reducing the Regulatory Burdens on Business,* Report to the Prime Minister and the Treasurer, Canberra, January 2006, p. ii.

for public comment. The decision RIS is lodged with the Cabinet submission and made publicly available following the decision-maker's announcement of the outcome.

Effective from 31 March 2010, Queensland has implemented a Regulatory Assessment Statement system (RAS). We note that the 'findings of the first scorecard and feedback from BCA members' were valuable in 'informing the development of the RAS system'.[26]

Recently the Commonwealth has amended its regulatory impact assessment processes. The BCA agrees with the Productivity Commission that some of the reforms are welcome with the conclusion that 'development of a central online register of both RISs and post-implementation reviews, and the earlier signalling of non-compliance with the process – will improve transparency and accountability'.[27]

Other reforms of the Commonwealth RIS process, however, such as streamlined RISs for election commitments and a narrowing of the range of options required to be analysed in a RIS, are more problematic.

In our view, the recent review of the best practice regulation handbook has potentially compromised the effectiveness of the RIS processes. For example, it is unclear why RISs are no longer required to compare options, as this comparison would normally highlight the option with the greatest net benefit to the community. Additionally, the BCA is concerned with the new process in which 'agencies may be given direction regarding which options to analyse in a RIS for the Cabinet or a Committee of Cabinet'. We believe this has the potential to undermine the purpose of RISs, which is for agencies to undertake a thorough assessment of all of the options and to identify the most favourable one. If agencies can be given direction by Cabinet, this colours the analytical process and in our view undermines the ability for agencies to consider all available options. These concerns have also been expressed by the Productivity Commission, which noted that:

> … changes – such as potentially narrowing the range of options analysed in a RIS and changes to some adequacy criteria such as the RIS no longer being required to demonstrate that the preferred options has the greatest net benefit – may serve to constrain the operations of the RIS process and seem unlikely to address the concerns of industry.[28]

A similar concern relates to the newly created 'election RIS', which would focus on the manner of implementation of an election commitment. Election commitments may be made by politicians in the 'heat of the moment'. Additionally, opposition parties may make election commitments without the benefit of all of the information available to Treasury and other government departments. Therefore, a

[26] Queensland letter.
[27] Productivity Commission, *Annual Review of Regulatory Burdens on Business: Business and Consumer Services*, Research Report, Canberra, August 2010, p. xxiii.
[28] ibid.

RIS should identify all the options available to achieve a desired outcome, not just focus on implementation of a particular election commitment or direction from Cabinet.

The BCA is particularly concerned that the changes to the RIS process at the Commonwealth level may inhibit the independence and robustness of the policy analysis and advice received by ministers from the bureaucracy, and this will have major implications for the outcomes of policy and its effectiveness and 'evidence' base.

These reforms may also reduce the effectiveness of the OBPR as an assessor of RISs. Robust RIS requirements that prescribe a thorough analysis of all available options, provide the OBPR with scope to assess whether the analysis is thorough and compliant with process. However, narrowing the requirements for analysis in RISs means that the OBPR will have less ability to assess them as being non-compliant with the process. We have already outlined why we consider a strong independent assessment mechanism is important for good policy outcomes to be achieved. A further diminishing of the power of the OBPR to reject RISs, is therefore regarded with concern.

The BCA therefore recommends that in conjunction with the OBPR being moved back into the Productivity Commission, the OBPR conduct a review of the RIS process with the view to reintroducing more rigorous RIS requirements. As outlined above, many jurisdictions such as Western Australia and the Northern Territory have introduced a two-stage RIS process. The Productivity Commission recommends that this is introduced at a Commonwealth level, and states:

> As recommended in last year's Annual Review of Regulatory Burdens on Business, and recently endorsed by the OECD, consultation on regulatory proposals would be more effective if a two stage approach were taken (in a similar manner to the COAG requirements) that required the RIS to be published in a draft form as a consultation document … This would formalise the consultation process and allow the draft RIS to form a tangible centrepiece for discussions between industry and government. If the Australian Government has concerns about the time trade-off of a two stage approach, particularly for less significant regulatory proposals, it could initially be implemented only for those proposals with the largest potential impacts.[29]

In South Australia the use of the Business Cost Calculator (BCC) for cost–benefit analysis is mandated, and its use encouraged in some jurisdictions including the Northern Territory and Victoria. The Victorian Guide to Regulation 'prescribes that a quantitative analysis should be undertaken and a monetary value should be assigned to costs and benefits wherever feasible'.[30] About 92 per cent of Victorian RISs provide some quantitative estimates of the costs of regulation between 2005 and 2009 financial periods.

[29] ibid., p. 44.
[30] Victoria letter.

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South Australia is currently considering reforms to the guidelines for regulation-making and 'options for publishing Regulation Impact Statements … in line with South Australia's commitments under COAG'. Under COAG, South Australia made the commitment to consider these options from 1 July 2007. It is recommended that South Australia moves forwards with its regulatory reform agenda.

In Victoria a system of Business Impact Assessments (BIAs) for primary legislation and RISs for subordinate legislation has been developed. In October 2010, the amendments to the Subordinate Legislation Amendment Act were passed, which provide that RISs will apply to a broad range of subordinate legislative instruments, and not just Statutory Rules. This is a commendable reform effort. However, as outlined below there are some additional improvements to the Victorian system that the BCA recommends for Victoria ultimately to increase its rating in this benchmark.

The Victorian system includes a role for the VCEC to assess the BIA and RIS compliance with regulatory process. However, in the case of BIAs, the analysis informs Cabinet deliberations and, as such, the information included in a BIA is treated as confidential to government. Additionally, while the VCEC has a role in reviewing the BIAs, ultimately it is possible for a non-compliant BIA to proceed to Cabinet with the VCEC noting its concerns. The BCA considers that the BIA process in Victoria should be improved. It is difficult for stakeholders, including business, to understand the cost–benefit analysis and the options available for implementation of policy, if the information in the BIA is not made publicly available. One of the reasons that this is important is that stakeholders and the community need to understand the impacts of legislation that is being produced.

An additional concern with the BIA process has been highlighted by the recent *Climate Change Bill 2010* in Victoria. This Bill represents a significant economic proposal that has been introduced to Parliament without adequate cost–benefit or impact analysis. In recent correspondence with the Victorian Government we have been advised that the justification for avoiding a BIA is that RISs will be required for regulations made in the future. However, this appears to contradict the *Victorian Guide to Regulation*, which highlights that 'when the sole or primary purpose of the legislation is to enable the making of regulations that would subsequently be subject to a RIS, a BIA is still required if the regulation would impose a significant effect on business and/or competition'.[31] The BCA considers that there is sufficient detail contained in the Bill to enable an impact assessment to be completed. It is therefore concerning that it appears to be relatively easy for the government to avoid conducting a BIA by assuming an indirect rather than a direct impact resulting from legislation.

The VCEC is currently reviewing the impact assessment process in Victoria. The BCA recommends that a more transparent BIA process is developed and that the requirements around when a BIA should be produced should be strengthened. This could be achieved by making it consistent with the RIS process and ensuring that BIAs are made public.

[31] Department of Treasury and Finance, *Victorian Guide to Regulation*, Government of Victoria, Melbourne, p. 4-8.

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There continues to be considerable variation in processes and requirements for the conduct of RISs across the country, and this can add confusion and difficulties for businesses that wish to contribute to the process. The BCA urges improvements in the use of RISs, such as the use of draft RISs for consultation purposes as well as improved and more widespread use of cost–benefit analysis.

Consultation

Consultation is one of the most important aspects of regulation-making. Governments cannot adequately assess practical implementation issues, the compliance burden, and the costs of a regulatory proposal on business if they are not consulting business or other affected stakeholders in an open and transparent way that allows the opportunity or adequate time to respond.

In its research report of August 2010 titled *Annual Review of Regulatory Burdens on Business: Business and Consumer Services* the Productivity Commission highlighted the significance of consultation for the collection of sufficient evidence for development of policy. In the areas of property and finance laws, significant reforms have suffered from inadequate consultation, and the Productivity Commission noted:

> These failings of regulatory processes are of particular concern given the significant and wide reaching regulatory reforms of the finance sector currently being developed internationally in response to the Global Financial Crisis. It is important that any reform proposals are subject to transparent and rigorous processes that take into account all of the impacts on the finance sector and local conditions.[32]

The consultation must be proactive, with relevant stakeholders identified and their input actively sought. While initiatives such as consultation websites are useful in centralising the consultation process, there must also be a process for notifying relevant stakeholders that consultations will occur.

In addition, comprehensive consultation processes with all relevant stakeholders must include adequate time periods and sufficient transparency of information (e.g. the draft RIS and the Exposure Draft of the regulation being provided for consultation).

In preparing this 2010 Scorecard it is evident that processes of consultation continue to remain inconsistent and inadequate across all jurisdictions. We highlighted a simple indicator in our 2007 Scorecard of the differences in consultation periods. While consultation periods have been improved, they continue to be inconsistent and many jurisdictions do not meet the absolute minimum 30-day consultation timeframe recommended by the BCA (see Exhibit 5 below).

[32] Productivity Commission, *Annual Review of Regulatory Burdens on Business: Business and Consumer Services*, Research Report, Canberra, August 2010, p. xiv.

Exhibit 5. Consultation periods for Regulatory Impact Statements

New South Wales – minimum 28-day consultation period

Victoria – minimum 28-day period (but this can be extended where practicable to 60 days)

Australian Capital Territory – 2005 Community Engagement Manual recommends a minimum consultation period of 6 weeks (where comprehensive feedback is sought on significant proposals, the consultation period should be extended to 12 weeks)

Tasmania – consultation of not less than 21 days

Western Australia – the Regulatory Gatekeeping Unit does not explicitly provide for a required consultation period in the guidelines; however, it does recommend on the website, a period of 12 weeks

Northern Territory – consultation timeframes are not prescribed

Queensland – minimum of 28 days consultation

South Australia – consultation periods vary, for some activities there are no prescribed times

Commonwealth – six to 12 weeks is described as 'seems appropriate for effective consultation depending on the significance of the proposals'

Note: Some jurisdictions do not require RISs for all types of regulation.
Source: letters from the jurisdictions to the BCA and publicly available information.

All jurisdictions have clear room for improvement on consultation. BCA members have anecdotally provided examples of consultation processes being inadequate or simply not applied in practice. This was recently highlighted in the Productivity Commission's review *Annual Review of Regulatory Burdens on Business: Business and Consumer Services*, which stated in respect of the Commonwealth that:

> Despite long established (and reviewed) consultation processes used in developing regulations, industry still finds these processes lacking in several respects. Finance and property industry groups consider the most significant regulatory failings are a lack of transparency and continuity in consultation processes, short consultation timeframes and a lack of credible evidence in the current regulation-making process.[33]

The Commonwealth is responsible for administering some of the most significant business laws. However, it has demonstrated a poor record of consultation as highlighted in the Productivity Commission's findings above. Examples where inadequate or no consultation have had very poor

[33] ibid.

outcomes resulting in elimination or significant changes to policy proposals include the fuel watch, grocery watch, taxation of employee share schemes and mining profits. There have been extremely short timeframes provided for stakeholders to feed into many policy proposals that have wide-ranging implications for the economy, such as consumer credit arrangements where less than a month was provided for consultation on over 700 pages of documentation. Some examples of inadequate consultation timeframes are highlighted in Exhibit 6.

Exhibit 6. Inadequate consultation timeframes

- Employee share plans – 5 business days (5 June 2009 to 12 June 2009)
- Unfair contracts – 9 business days (11 May 2009 to 22 May 2009)
- Termination payments bill – less than a month (5 May 2009 to 2 June 2009)
- *National Consumer Credit Bill 2009* – less than a month (27 April 2009 to 22 May 2009)

Note: in some instances extensions or additional consultation may have been granted in response to requests by stakeholders.

However, where adequate consultation has been undertaken, appropriate and balanced outcomes for the economy have been delivered, such as the discussion paper consultation process of 'creeping acquisitions' proposals and the Productivity Commission process with respect to executive remuneration. This demonstrates the importance of consultation in developing 'evidence-based' policy.

As outlined above, establishing good regulation-making processes alone is not enough to deliver good regulation. It is imperative that those processes are followed by the regulation makers – that requires accountability and transparency mechanisms to ensure that processes are properly followed. This is reinforced by the Productivity Commission's recommendation to the Commonwealth Government in its recent research report:

> Best practice regulation is most likely to be achieved when timely, transparent and rigorous consultation is undertaken with industry. The Australian Government should improve its consultation processes by:
>
> - incorporating a 'consultation' RIS in the regulation-making process
> - requiring the Office of Best Practice Regulation (OBPR) to extend its monitoring and reporting to the quality of consultation, by explicitly reporting on compliance by departments and agencies with the best practice consultation principles
> - using confidential consultation processes only in limited circumstances where transparency would clearly compromise the public interest – such as for national security or commercial-in-confidence matters, or for proposed tax regulation to deal with tax avoidance.[34]

The BCA considers that the Productivity Commission's advice is equally applicable to all jurisdictions.

[34] ibid., p. xxiii.

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No jurisdiction receives a good rating for this benchmark. Accordingly every jurisdiction should consider substantial improvements to their systems in respect of transparency.

Benchmark 3. Transparency

Jurisdiction	Assessment (2010)	Assessment (2007)	Change
Commonwealth	Adequate/Good	Not assessed	N/A
New South Wales	Adequate/Good	Not assessed	N/A
Victoria	Adequate/Good	Adequate/Good	=
Queensland	Adequate – but with clear room for improvement	Poor	▲
Western Australia	Adequate/Good	Poor	▲
South Australia	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=
Tasmania	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=
Australian Capital Territory	Adequate/Good	Adequate/Good	=
Northern Territory	Adequate/Good	Poor/Adequate	▲

4. Review

Good regulation-making processes require that regulations be subject to review to ensure that they continue to remain relevant and efficient over time.[35]

A good review system would require regulators to consider the process of keeping regulation up to date (e.g. by considering this issue in the RIS process) as well as incorporating mandatory sunset clauses.

In addition, jurisdictions should undertake regular red tape reviews to reduce the regulatory burden on business. There have been a number of initiatives across the jurisdictions in terms of red tape reduction. For example, a number of red tape reviews of specific areas of regulation that have been undertaken by individual jurisdictions are highlighted in Exhibit 7 below.

Exhibit 7. A 'sample' of regulatory reform initiatives within jurisdictions

- Each year the Better Regulation Office in New South Wales publishes its annual update, which reports on the New South Wales Government's performance in reducing the regulatory burden. Areas of regualtory reform in the October 2009 report include food regulations, hospitality registration assessments, planning approvals and group homes.
- The Victorian Treasurer releases a progress report each year on the *Reducing the Regulatory Burden* initiative, which provides information on how the Victorian Government is tracking compared to regulation reduction targets and also contains a list of the initiatives actioned by departments and agencies as well as several case studies. Included among the areas for regulatory reform in Victoria in the 2008–09 report are improvements to planning processes, corporate licensing, application processes through the SmartForms initiative and electrical safety certification.
- Queensland has over a number of years completed red tape reduction efforts. In its *Smart Regulation Annual Report 2008–09* examples of regulatory reduction initiatives are in areas including: taxation, wine licensing, engineering registration requirements, child care, gaming and liquor.
- Under a COAG commitment, the ACT Government undertakes a review of a major legislative regime each year. For example, the review of the Compulsory Third Party Insurance Scheme (and underlying Acts) was nominated as the ACT's 2009 review, while the review of the *Heritage Act 2004* will be nominated as the ACT's 2010 COAG review.
- Western Australia established a Red Tape Reduction Group (RTRG) to identify and report on opportunities to reduce the burden of existing state regulation and red tape on business and consumers. The RTRG has submitted its report to the government for consideration.
- South Australia's Competitiveness Council oversees the red tape reduction program and recommends practical ways the government can improve the business environment. Included among the areas of reform in South Australia are changes to the planning and development system and land tax reforms. The red tape reduction program includes reviews in areas such as cafes and restaurants,

[35] See Productivity Commission, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne, 2007, p. 125.

motor vehicle retailing and services, building construction, fishing and aquaculture and metal manufacturing.

- In Tasmania, the Business Tax and Regulation Reference Group has been established, comprising senior representatives from the Tasmanian business community, to provide an opportunity to work with the business community on a range of tax and regulation reform issues.

Source: Letters to the BCA in response to this report and various annual public reports.

Four states, New South Wales, Queensland, South Australia and Victoria, have set quantitative targets for red tape reduction[36] and others are conducting red tape reviews like the Northern Territory. In South Australia the 2006 red tape reduction target to reduce red tape for businesses by at least $150 million per annum in net terms by 2008, was exceeded at $170 million. In April 2009, the state announced a continued red tape reduction program for $150 million per annum over three years and new rolling five-year reviews of 'regulatory requirements'. South Australia takes a broad approach of cutting both administrative costs to government and compliance costs to business. In Queensland the benefits of red tape reduction include benefits and savings to business, community and government. In Victoria the Standard Cost Model for measuring regulatory burdens under the red tape reduction program was replaced with the *Victorian Regulatory Measurement Manual* from 1 January 2010. Victoria has also increased its red tape reduction targets. In the Northern Territory, the new regulation-making framework requires annual reviews of the stock of regulation.

The Commonwealth has established a Deregulation Policy Division in the Deregulation Group within the Department of Finance and Deregulation, to ensure attention is paid to the stock of existing regulation, and to streamlining regulatory burdens.[37] A coordination network has been established across all government agencies to promote a consistent approach to regulatory impact analysis.[38] In the BCA's view, these commitments lack the depth or detail to satisfy the requirement that regular reviews of red tape will be undertaken, or that some degree of measurable target will be implemented. The BCA is not aware of any published outcomes in respect of red tape reduction at a Commonwealth level as a result of these proposed processes. The BCA does, however, recognise that much good work is done by the Productivity Commission in reviewing and benchmarking regulations at a Commonwealth and state level. The Commonwealth could make use of the Productivity Commission's expertise in this area to conduct a Commonwealth red tape reduction exercise.

There continues to be inconsistency across jurisdictions in terms of sunset clause requirements for new regulation. The Commonwealth has a 10-year sunset period for legislative instruments.[39] 'Terms of sunset clauses vary, with Victoria and Tasmania having a ten year term and New South Wales having a five year term. Queensland introduced sunsetting provisions in 1992 … Western Australia has

[36] OECD, OECD Reviews of Regulatory Reform, *Australia: Towards a Seamless National Economy*, Paris, 2010, p. 150.
[37] ibid., p 75.
[38] ibid., p 75.
[39] ibid., p 76.

introduced a systemic review mechanism through the RIA process, but sunset clauses are not systematically applied.' [40] In South Australia regulations are subject to a sunset clause after 10 years.[41]

Benchmark 4. Review

Jurisdiction	Assessment (2010)	Assessment (2007)	Change
Commonwealth	Adequate/Good	Not assessed	N/A
New South Wales	Good	Not assessed	N/A
Victoria	Good – with some improvement shown	Good	▲
Queensland	Good	Good	=
Western Australia	Adequate/Good	Adequate – but with clear room for improvement	▲
South Australia	Good – with some improvement shown	Good	▲
Tasmania	Adequate – but with clear room for improvement	Adequate – but with clear room for improvement	=
Australian Capital Territory	Poor	Poor	=
Northern Territory	Adequate	Adequate – but with clear room for improvement	▲

[40] ibid., p 145.
[41] There is provision to postpone the expiry of a regulation for a period not exceeding two years at a time, and not exceeding four years in total (letter from South Australia).

Need to improve regulation-making across jurisdictions

In addition to assessing the performance of individual jurisdictions, the scorecard clearly demonstrated that even with improvements in individual regulation-making processes, there continues to be a lack of consistency across jurisdictions.

In the absence of a national, coordinated approach to red tape reform, it is apparent from this 2010 Scorecard that jurisdictions are in fact creating more regulatory complexity through developing differing regulation-making processes (making it difficult for business to feed into the process of policy making) as well as continuing to develop inconsistent regulations over time.

A national approach must include some consideration of consistency across the state and Commonwealth governments.

The Council of Australian Governments (COAG) has elevated the issue of red tape harmonisation, with work being progressed across the jurisdictions on the harmonisation of 27 regulatory 'hot spots' to deliver a seamless national economy. The BCA welcomes these initiatives, and has been particularly supportive of processes such as the harmonisation of OHS and trades licensing harmonisation and the standard business reporting initiative.

The BCA is aware that a number of jurisdictions are conducting reforms and reviews of red tape within their own jurisdictions, in response to business calls to reduce the regulatory burden. Exhibit 7 above provides examples of the regulatory reform initiatives within jurisdictions.

However, even with reviews in individual jurisdictions, if jurisdictions do not consider the national implications then inconsistencies and duplication can impose significant burdens on business and the community. For example, shop trading hours rules have been reviewed by individual jurisdictions. However, those rules continue to be inconsistent across borders. As a result, they continue to impose costly burdens on business, consumers and employees (see Exhibit 8).

Exhibit 8. Inconsistency of shop trading hours regulations

Both core trading hours and public holiday trading hours differ, not only in each state or territory but sometimes between stores in the same state. For example:

Within states:

- In Western Australia trading hours are legislated based on geographical location. Therefore, only stores in a designated tourist precinct are subject to longer trading hours (e.g. stores in Hay Street Mall can open until 9pm on weekdays but other stores will be permitted to trade until 9pm only on Thursdays). Only stores in designated tourist precincts may trade on Sundays. This imposes cost burdens on business, even where they operate only in one state.

Across states:

- Various restrictions and inconsistencies occur across the jurisdictions with respect to trading on public holidays. For example, New South Wales has a restriction to trade on Boxing Day (subject to certain exemptions), which contrasts with most other jurisdictions. Stores outside tourist precincts

cannot trade on any public holiday in Western Australia. In South Australia no stores can trade on public holidays (with the exception of the day after Good Friday). For businesses operating nationally, this can be costly as it coincides with key sales periods for most retail businesses.

- The weekday restrictions on trading, for example in Western Australia until 5pm, mean that stores have to operate differently across borders – for some retail stores this changes whether VIP customer nights or clearance nights can be offered in some jurisdictions if they cannot trade until 9pm.

The differences in trading hours legislation within and across jurisdictions presents a number of difficulties, and imposes costs and burdens on business and the community. For example, costs are faced by customers, employees and shareholders.

- Customers: Customers are given conflicting information in brochures and events, about trading hours, availability of retail discounts and offers (such as VIP shopping nights). Consumers do not receive service that matches up to service that can be provided by retailers internationally.

- Employees: Employees suffer inequality in working opportunities – for example, delayed rosters during holiday periods.

- Shareholders: Additional costs, compliance burdens and lost trade, have impacts on returns for shareholders. Additional costs are imposed because companies have to develop systems and processes to generate store-by-store rosters and salary calculations. Advertising and compliance costs are also increased – for example, multiple disclaimers are required for advertising and competition brochures.

Some jurisdictions, such as Australian Capital Territory, New South Wales, Tasmania, Victoria, Queensland and Western Australia, have provided guidance for agencies to consider national and cross-jurisdictional effects when assessing the costs and benefits of regulation.[42]

However, formalising such a process and ensuring that the processes used are consistent and mandatory would be beneficial. It is therefore commendable that on 15 February 2010, the Commonwealth Minister for Finance and Deregulation, in response to the OECD report, *Australia: Towards a Seamless National Economy*, stated that jurisdictions would be required to 'look at the national landscape where that's appropriate, not just their own immediate area'. He said 'Inevitably, state and territory governments focus on their own backyard in making decisions about regulations'.[43]

The BCA looks forward to more detail being placed around this initiative, as it may be a step towards ensuring as jurisdictions make and review regulations, that they also consider whether there are ways that regulations around the country could be considered to reduce the impact on business and the

[42] OECD, OECD Reviews of Regulatory Reform, *Australia: Towards a Seamless National Economy*, Paris, 2010, pp. 143–144.
[43] 'Tanner Commits to Regulatory Reform', *The Australian Financial Review*, 16 February 2010, p. 8.

community. There has yet to be any detail announced around how this might be implemented, but the BCA strongly recommends progress in this area.

Recommendations for future improvement

This 2010 Scorecard assesses the regulation-making processes that have been developed by jurisdictions across Australia. However, such an exercise is not of itself amenable to assessing whether jurisdictions are actually complying with their regulation-making processes. BCA members have indicated that despite improvements in regulation-making processes, a lack of accountability and transparency for regulatory actions has meant that good processes are not always followed.

In this 2010 Scorecard, we identified improvements that are needed in the transparency and accountability benchmarks within jurisdictions. In our view, much of the poor regulation that has been produced in recent years has been the result of rushed implementation of regulatory ideas, with a lack of consultation and therefore a lack of understanding of the practical impacts of regulatory proposals.

At the COAG meeting in April 2007, all the jurisdictions identified principles for regulation-making and agreed timetables for reforming their individual red tape-making processes. In the 2007 Scorecard we highlighted that despite those COAG commitments, there was not enough emphasis contained in those commitments on the benchmarks of 'transparency' and 'accountability'. The BCA has highlighted in this report, many options for improving accountability and transparency mechanisms (and these are supported by the Productivity Commission), including:

- creating, or enhancing, the independence of oversight agencies
- incorporating a robust and quantified 'consultation' RIS in the regulation-making process
- requiring the independent oversight agency to extend its monitoring and reporting role to the quality of consultation that has been undertaken
- using confidential consultation processes only in limited circumstances where transparency would clearly compromise the public interest.[44]

It is encouraging that the latest out-of-session Implementation Plan for Regulatory Reform now includes milestones around regulation-making systems and their review. The results of the 2011 analysis should be made publicly available.

The BCA considers that COAG commitments on regulation-making processes can be improved, with emphasis for reform by all Australian governments in the areas of 'transparency' and 'accountability'.

A benchmarking system to examine regulation-making processes around Australia is very important. Examination acts as an accountability mechanism and also identifies progress and further improvements that can be made. Part of the problem is the lack of external agencies or 'watchdogs' to ensure that government reform commitments are followed through with specific actions. Many jurisdictions have acknowledged that the 2007 Scorecard was a significant driver of reform progress (see Exhibit 2). This highlights the important role that an independent assessor can have in driving compliance, reform and implementation.

[44] See Productivity Commission, *Annual Review of Regulatory Burdens on Business: Business and Consumer Services*, Research Report, Canberra, August 2010, p. xxiii.

2010 Scorecard of Red Tape Reform

In the BCA's 2005 Action Plan, we recommended an advisory council be established at a Commonwealth level with representatives from across business and other affected groups, such as consumers.[45] Such a body, with the support of a full-time executive chairman or officer and a dedicated secretariat, would fill the gap identified by the OECD in its recent review of Australia's regulatory systems, in which it stated that while 'the current reform agenda is well advanced, one of the challenges is the potential loss of momentum for reform in the future'.[46] The OECD also highlighted the usefulness of regular and formal consultation with affected stakeholders, recommending:

> The BRCWG, or a similar national entity, could also consider more formal and regular interaction with key business stakeholders to gauge their views and support for the current reform agenda and for other reforms of most concern to business.[47]

The BCA supports the Productivity Commission review, agreed through COAG, to assess the efficiency and quality of both COAG and jurisdictional regulation impact assessment (RIA) processes in 2012. However, it is our understanding that this is not intended to be a regular review or aimed at assessing outcomes or compliance with regulation-making processes.

Recommendation: The BCA considers that the Productivity Commission should be tasked with regularly undertaking an assessment of regulation-making systems and compliance by all jurisdictions with their regulation-making processes. In conjunction with this, a permanent advisory council, made up of representatives from across business and other affected groups, could be established, which would inform the assessment and be able to provide information about the regulatory outcomes in the jurisdictions.

[45] See BCA, *Business Regulation Action Plan for Future Prosperity*, 2005, pp. vii and A1–32.
[46] OECD, OECD Reviews of Regulatory Reform, *Australia: Towards a Seamless National Economy*, Paris, 2010, p. 150.
[47] ibid., p. 151.

2010 Scorecard of Red Tape Reform

Attachment

Glossary

OECD	Organisation for Economic Co-operation and Development
BRCWG	Business Regulation and Competition Working Group
BRO	New South Wales Better Regulation Office
VCEC	Victorian Competition and Efficiency Commission
OBPR	Office of Best Practice Regulation (Commonwealth)
COAG	Council of Australian Governments
2005 Action Plan	BCA report, *Business Regulation Action Plan for Future Prosperity*, May 2005
2006 Scorecard	BCA report, *Regulatory Reform: A Scorecard to Measure Australia's Progress*, June 2006
2007 Scorecard	BCA report*, A Scorecard of State Red Tape Reform*, May 2007

Additional explanatory information on overall findings

Commonwealth: While the Commonwealth was not assessed in the 2007 State Scorecard, this was because the BCA had already made an assessment of Commonwealth regulation-making processes in the 2005 Action Plan and the 2006 Scorecard. Both of those documents highlighted the improvements that could be made to the regulation-making processes at a Commonwealth level. On 15 August 2006, the BCA supported the government's response to the Banks Taskforce including the strengthening and reorientation of the Office of Regulation Review within the Productivity Commission, becoming the Office of Best Practice Regulation (OBPR) as well as mandating the use of the 'Business Cost Calculator' by all agencies to quantify in dollar terms the compliance cost of proposed regulatory options. In the last scorecard in 2007, the BCA noted its support for a truly independent agency such as the OBPR. This report has identified many areas in which the BCA considers there is a declining performance in the Commonwealth regulatory framework. For example, the OBPR has moved from the Productivity Commission into the Department of Finance and there is evidence that this has reduced its independence.

2010 Scorecard of Red Tape Reform

New South Wales: In the last scorecard we were unable to provide New South Wales with an official score, because that state was in the process of implementing significant reform to its regulatory framework. It was considered at that time that it would be misleading to assess the programs that were in the process of implementation given that there was 'clear and broad agreement that these processes have been poor to date' (2007 Scorecard).

Recent Developments: Following the last scorecard many jurisdictions, such as Queensland, have made efforts to improve their regulation-making processes. Some of these improvements have been implemented recently. The BCA is encouraged that many jurisdictions have taken on board the advice and comments from the previous scorecard. The BCA considers that it is important to acknowledge improvements and achievements, even if the improvements have only more recently been implemented. However, where a jurisdiction is 'considering' improvements at the time of this scorecard, the BCA has not been able to include those considerations in the assessment.

BUSINESS COUNCIL OF AUSTRALIA

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